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GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C.			LEE, LAURA MICHELLE	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte G. GARY GOCHANOUR

Appeal 2009-002934
Application 10/686,298
Technology Center 3700

Decided: October 14, 2009

Before JENNIFER D. BAHR, MICHAEL W. O'NEILL, and
FRED A. SILVERBERG, *Administrative Patent Judges*.

SILVERBERG, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

G. Gary Gochanour (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1, 4, 6, 7, 10, and 12¹, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Appellant's counsel presented oral arguments on September 22, 2009.

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellant's claimed invention is directed to a dispenser for a protective hand covering (Spec. 1:6-8).

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A dispenser for a hand covering, comprising:
 - a housing to receive a roll of thin, flexible film having opposing side edges to be used as a hand covering;
 - a form configured to be grasped by a user through the film such that the film temporarily clings to the user's hand; and
 - a set of interlocking chains or opposing belts on either side of the housing to retain the side edges of the film as it moves through the dispenser for each use.

¹ The Examiner's Answer noted that claims 5 and 11 were not rejected as they were objected to as being dependent on a rejected base claim (Ans. 2). Therefore, claims 5 and 11 will not be considered in this Appeal.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Stephenson	US 4,773,532	Sep. 27, 1988
Broehl	US 2002/0073821 A1	Jun. 20, 2002

The following rejections by the Examiner are before us for review:

1. Claims 1, 6, 7², 10, and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Stephenson.
2. Claims 4 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Stephenson in view of Broehl.

ISSUE

The issue before us is whether the Examiner erred in finding that Stephenson describes a set of interlocking chains or opposing belts on either side of the housing to retain the side edges of the film as called for in independent claims 1 and 7 (App. Br. 7).

² Claim 7 was not listed as being rejected under 35 U.S.C. § 102 in the first sentence of the Grounds of Rejection section of the Examiner's Answer (Ans. 4) or in the Final Rejection mailed April 3, 2007 (Final Office Action, pg. 4). The Examiner does analyze claim 7 against Stephenson, *see* Ans. 4.) The 35 U.S.C. § 102 rejection of claim 7 was argued by both the Appellant (App. Br. 7) and the Examiner (Ans. 6). Inasmuch as both Appellant and the Examiner appear to consider a 35 U.S.C. § 102 rejection of claim 7 as appealed, the 35 U.S.C. § 102 rejection of claim 7 will be considered in this appeal.

ANALYSIS

Appellant contends that Stephenson does not describe two sets of interlocking chains, that is, a first set on one side of the housing and a second set on a second side of the housing (Reply Br. 2, App. Br. 7).

The Examiner found that (1) Stephenson describes a series of perforations 17 (Ans. 7); (2) Stephenson's perforations 17 are considered to be chains (Ans. 7); (3) Stephenson describes chains on one side of the housing (Ans. 8); (4) the word "either" has two definitions, "being the one and the other of two" or "being the one or the other of two" (Ans. 8); (5) the limitation of "either" as called for in independent claims 1 and 7 is broad enough to be read on both of the aforementioned definitions (Ans. 8); and (6) since Stephenson describes chains on one side of the housing, Stephenson describes chains on "either" side of the housing as called for in independent claims 1 and 7 (Ans. 8).

Independent claims 1 and 7 call for, *inter alia*, the limitations "a roll of film having opposing side edges," and "a set of interlocking chains on either side of the housing to retain the side edges of the film."

The ordinary meaning of the word "either" includes "one or the other;" and "one and the other; each." THE AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).

In order for the opposing side edges of the film to be retained, as called for in claims 1 and 7, there must be a set of interlocking chains on both sides of the housing. Therefore, the word "either" as called for in claims 1 and 7 can only be interpreted as "one and the other; each." Accordingly, claims 1 and 7 are interpreted as calling for a set of

interlocking chains on both sides of the housing to retain the side edges of the film.

Stephenson describes a dispensing system including an enclosure 14, a backing sheet 10 fabricated from a film and wound in the form of a spiral roll 11, the roll 11 is positioned within the housing 14, an advancing crank 15, and a toothed sprocket wheel 16 engaging perforations 17 in the backing sheet 10 (col. 2, ll. 43-63; fig. 1). Stephenson's perforations 17 are located on only one side of the housing 14.

Therefore, we agree with Appellant that Stephenson does not describe two sets of interlocking chains, that is, a first set on one side of the housing and a second set on a second side of the housing as called for in claims 1 and 7.

Accordingly, Stephenson does not anticipate claims 1 and 7. For the same reasons, Stephenson does not anticipate claims 6, 10, and 12, which depend from claims 1 and 7.

The Examiner has not relied on Broehl for any teaching that would remedy the deficiency in the Stephenson (Ans. 5). We thus conclude that the Examiner also erred in rejecting claims 4 and 10 over Stephenson in view of Broehl.

CONCLUSION

Appellant has established that the Examiner erred in finding that Stephenson describes a set of interlocking chains or opposing belts on either side of the housing to retain the side edges of the film as called for in independent claims 1 and 7.

Appeal 2009-002934
Application 10/686,298

DECISION

The decision of the Examiner to reject claims 1, 4, 6, 7, 10, and 12 is reversed.

REVERSED

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